

(2012) 10 AHC CK 0219

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26146 of 2008

Ghan Shyam Tripathi

APPELLANT

Vs

U.P. Secondary Education Services Selection Board,
Allahabad and Others

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 21

Citation : (2012) 10 ADJ 422

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Advocate : Surya Narain and Sushil Shukla, for the Appellant; Neeraj Tiwari and Vashistha Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Dilip Gupta, J.—The petitioner, who was appointed as a permanent Assistant Teacher in Bapu Inter College, Salempur, District Deoria (hereinafter referred to as the "Institution"), has sought the quashing of the order dated 20th February, 2008 by which the U.P. Secondary Education Services Selection Board, Allahabad (hereinafter referred to as the "Board") has granted prior approval to the proposal of the Committee of Management of the Institution to terminate the services of the petitioner u/s 21 of the U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as the "Secondary Education Act"). The petitioner was appointed as an Assistant Teacher in the Institution on 8th July, 1970 and the appointment was approved by the District Inspector of Schools, Deoria on 8th September, 1970. The said Institution is recognised under the provisions of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "Intermediate Education Act"). The petitioner was placed under suspension 6th March, 1992 by the Committee of Management of the Institution but the suspension order lapsed since it was not approved by the District Inspector of Schools within the statutory period of 60 days. The petitioner was

again placed under suspension by the Committee of Management of the Institution on 2nd July, 1992 and it is stated that this suspension order also lapsed. The petitioner, therefore, filed Writ Petition No. 35048 of 1992 for full payment of salary as the suspension orders had lapsed. This petition was disposed of on 29th May, 1998 with the following directions :

I accordingly direct the respondent Nos. 1 and 2 to pay salary to the petitioner with effect from 2.7.1992 if the order of suspension has automatically lapsed after expiry of the period of sixty days and no punishment order has been passed against the petitioner. The respondents may arrange to pay the salary of the petitioner within three months of filing a certified copy of this order before them. In case the petitioner is not entitled for payment of the salary as indicated above or there is any legal impediment in release of the salary of the petitioner the respondent Nos. 1 and 2 would pass a reasoned order indicating the reasons. In case the committee of Management withheld the petitioner's salary for any unjustifiable reason, it would be open for the District Inspector of Schools to take such action as provided under U.P. Act No. 24 of 1971 for payment of the petitioner's salary.

2. A charge-sheet was sent by the Committee of Management of the Institution to the petitioner by the letter dated 26th April, 2002 requiring the petitioner to submit his reply within 15 days. Another letter dated 6th June, 2002 was sent to the petitioner requiring him to submit his reply to the charge-sheet within 15 days. On 19th June, 2002, the Committee of Management of the Institution, on the basis of the allegations contained in the charge-sheet and the preliminary enquiry report, resolved to terminate the services of the petitioner and send the papers for approval to the District Inspector of Schools for granting approval. u/s 21 of the Secondary Education Act, the District Inspector of Schools has to forward the papers to the Board for granting prior approval to the resolution of the Committee of Management of the Institution but as the papers were not forwarded by the District Inspector of Schools to the Board, the Committee of Management of the Institution filed Writ Petition No. 55366 of 2005 which was disposed of on 16th August, 2005 with a direction to the District Inspector of Schools to transmit the entire papers within a month to the Board which shall consider the resolution in accordance with law after giving opportunity to the parties.

3. The District Inspector of Schools, Deoria then forwarded the papers to the Board by the letter dated 4th September, 2006 which letter was received by the Board on 15th September, 2006. However, as complete papers were not sent by the District Inspector of Schools, the Board sent a letter dated 28th October, 2006 to the District Inspector of Schools to forward the complete papers and then the District Inspector of Schools forwarded the papers to the Board by the letter dated 27th November, 2006. Thereafter the District Inspector of Schools also forwarded some more papers to the Board by the letter dated 17th February, 2007 which letter was received by the Board on 28th February, 2007.

4. The Board issued notices to the parties and in response the petitioner filed a reply dated 24th April, 2007. The petitioner and the representative of the Management of the Institution, appeared before the Committee constituted by the Board on 30th March, 2007, 3rd April, 2007, 25th April, 2007 and 29th May, 2007. The Committee examined the charge-sheet and the reply submitted by the petitioner and ultimately on 27th July, 2007 recommended to the Board to grant approval to the resolution passed by the Committee of Management of the Institution on 19th June, 2002 for terminating the services of the petitioner. The Board accepted the recommendation of the Committee on 20th February, 2008.

5. The District Inspector of Schools, in the meantime, sent a letter dated 11th January, 2008 to the Manager of the Committee of Management of the Institution for permitting the petitioner to join the Institution. The petitioner claims to have submitted his joining report before the Principal of the College but the Committee of Management filed Writ Petition No. 5075 of 2008 and an interim order was passed on 29th January, 2008 which is reproduced below:

Connect with writ petition No. 22803 of 2007.

Sri Surya Narayan, the learned counsel for the respondent No. 4 has filed a counter-affidavit which is taken on record.

Pursuant to the order of the Court dated 28.1.2008, Sri A.K. Yadav, the learned counsel for the Selection Board has filed an affidavit explaining the reasons, as to why, action could not be taken on the resolution of the Committee of Management. It is alleged that the punishment committee had heard the matter on 29.5.2007, and since then, action could not be taken by the Selection Board on account of incomplete quorum of the members of the Board. The affidavit indicates that at the present moment, there is no Chairman and that there are only four members of the Board.

Under the Regulation 4 of the U.P. Secondary Education Services Selection Board (Procedure and Conduct of Business) 1st Regulation, 1998, the quorum for a meeting shall be half of the total members for the time being. Consequently, if there are four members available at the present moment, the quorum for the meeting would be two members. Since there are four members available, it is not necessary that the Chairman should be available in order to preside over the meeting of the Board. As per Regulation 11 read with Regulation 4(2), in the absence of the Chairman, the Vice-Chairman will preside over the meeting of the Board and in the absence of the Vice-Chairman, the senior most member present would preside over the meeting. Consequently, the Board which has not held a meeting since 6.6.2007, is unwarranted whereas under Regulation 4(1), the meeting of the Board is required to be held twice in a month.

In view of the aforesaid, the respondent No. 1, namely the Selection Board is directed to hold a meeting of the Selection Board within three weeks from today and take action on the proposal submitted by the Committee of Management, namely the petitioner vis-a-vis respondent No. 4.

It has come on record that the Respondent No. 4 has not been paid his salary since 1993 on the ground that he has not joined his duty. Consequently, as an interim measure, this Court directs that the effect and operation of the order dated 11.1.2008 passed by the District Inspector of Schools shall not be given effect to till the next date of listing. Rejoinder-affidavit may be filed by the petitioner within the same period.

List on 26.2.2008, by which time the Selection Board will file an affidavit on the action taken.

On 20th February, 2008 the Board approved the decision taken by the Committee and the said decision taken by the Board was communicated to the District Inspector of Schools with copies to the Manager of the Committee of Management of the Institution and the petitioner on 22nd February, 2008.

6. Learned counsel for the petitioner submitted that the Board committed an illegality in granting approval to the resolution of the Committee of Management of the Institution for terminating the services of the petitioner as the procedure contemplated under Regulations 35, 36 and 37 of the Regulations contained in Chapter III of the Intermediate Education Act had not been followed by the Committee of Management and in this connection he has placed before the Court the minutes of the resolution of the Committee of Management of the meeting held on 19th June, 2002. Learned counsel for the petitioner also submitted that even though by the letter dated 6th June, 2002 the petitioner was required to submit a reply to the charge-sheet within 15 days but the Committee of Management of the Institution, even before the expiry of the said period of 15 days, met on 19th June, 2002 and resolved to terminate the services of the petitioner. Learned counsel, therefore, contended that the enquiry was conducted in breach of the procedure prescribed under Regulations 35, 36 and 37 of the Regulations contained in Chapter III of the Intermediate Education Act and in the breach of principles of natural justice and, therefore, in such circumstances the Board should have refused to grant approval to the resolution of the Committee of Management for terminating the services of the petitioner. Learned counsel also submitted that the Board on its own could not have undertaken the task of the Enquiry Officer by requiring the petitioner to file a reply to each of the charges contained in the charge-sheet and then take a decision after considering the reply filed by the petitioner. In support of this contention, learned counsel for the petitioner placed reliance upon the Division Bench judgment of this Court in *Ramesh Chandra Mishra v. U.P. Secondary Education Services Commission, Allahabad, 1990 (1) UPLBEC 488* and *Committee of Management S.B. Inter College, Azamgarh v. U.P. Secondary Education Services Selection Board, Allahabad, 2008 (2) ESC 989*.

Sri Vashishtha Tiwari, learned counsel appearing for the Committee of Management of the Institution has, however, supported the decision taken by the Board and has submitted that no illegality was committed by the Board in itself examining the charges and taking a decision.

7. I have considered the submissions advanced by the learned counsel for the parties.

Section 16G(3)(a) of the Intermediate Education Act provides that no Principal, Head-master or teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments, or served with notice of termination of service except with the prior approval in writing of the Inspector. Sub-section 3(b) of Section 16-G of the Intermediate Education Act provides that the Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice for termination of service proposed by the management.

Section 16-G(3)(a) and (b) of the Intermediate Act are quoted below :

16-G. Conditions of service of Head of Institutions, teachers and other employees.--

(1)....

(2)....

(3)(a) No Principal, Head-master or teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments, or served with notice of termination of service except with the prior approval in writing of the Inspector. The decision of the Inspector shall be communicated within the period to be prescribed by regulations.

(b) The Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice for termination of service proposed by the management:

Provided that in the cases of punishment, before passing orders, the Inspector shall give an opportunity to the Principal, the Head-master or the teacher to show-cause within a fortnight of the receipt of the notice why the proposed punishment should not be inflicted.

The Secondary Education Act came into force on 14th July, 1981 except Section 21, which was to come into force on such date as the State Government may, by notification, appoint in this behalf. Subsequently the State Government issued the notification dated 27th December, 1983 that Section 21 shall come into force from 1st January, 1984.

Section 21 of the Secondary Education Act provides that the management shall not, except with the prior approval of the Board, dismiss any teacher or remove him from service, or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such thing done without such prior approval shall be void. The said Section 21 of the Secondary Education Act is reproduced below:

21. Restriction on dismissal etc. of teachers.--The Management shall not, except with the prior approval of the (Board), dismiss any teacher or remove him from service, or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such thing done without such prior approval shall be void.

Thus, after coming into force of Section 21 of the Secondary Education Act on 1st January, 1984, the management has to seek prior approval of the Board and not of the District Inspector of Schools as contemplated u/s 16-G of the Intermediate Education Act.

The procedure for holding enquiry and imposing punishment upon a teacher of an Intermediate College is provided for in Regulations 35, 36 and 37 of the Regulations contained in Chapter III of the Intermediate Education Act which are reproduced below:

35. On receipt of a complaint or an adverse report of fact of a serious nature, the Committee may in the cases of teachers appoint the Headmaster or Principal or Manager as the enquiry officer (or the Manager may himself set up the enquiry if such power has been delegated to him by the Committee under the rules), and in the case of the Head-master or Principal, small sub-Committee, with instructions to submit the report as expeditiously as possible.

36. (1) The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the employee charged and which shall be so clear and precise as to give sufficient indication to the charged employee of the facts and circumstances against him. He shall be required within three weeks of the receipt of the charge-sheet to put in a written statement of his defence and to state whether he desired to be heard in person. If he or the inquiring authority so desires an oral inquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry such oral evidence will be heard as that inquiring authority considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person, and to have such witnesses called as he may wish : provided that the inquiring authority conducting the enquiry may for sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. The inquiring authority conducting the enquiry may also, separately from these proceedings, make his own recommendation regarding the punishment to be imposed on the employee.

(2) Clause (1) shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him.

(3) All or any of the provisions of clause (1) may for sufficient reasons to be recorded in writing be waived where there is difficulty in observing exactly the requirements thereof and those requirements can in the opinion of the inquiring

authority be waived without injustice to the person charged.

37. Soon after the report of the proceedings and recommendation from the inquiring authority are received, the Committee of Management shall after notice to employee meet to consider the report of the proceeding and recommendation made and take decision on the case. The employee shall be allowed, if he so desires, to appear before the Committee in person to state his case and answer any question that may be put to him by any member present at the meeting. The Committee shall then send a complete report together with all connected papers to the Inspector or Regional Inspectress, as the case may be, for approval of action proposed by it.

8. A perusal of Regulation 35 shows that Committee may in the cases of teachers appoint the Head-master or Principal or Manager as the enquiry officer (or the Manager may himself set up the enquiry if such power has been delegated to him by the Committee under the rules), and in the case of the Head-master or Principal, small sub-Committee, with instructions to submit the report as expeditiously as possible.

Under Regulation 36 of the Regulations, the grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the employee concerned who shall be required to submit his written statement within three weeks of the receipt of the charge-sheet. The procedure for holding an enquiry and cross-examination is also provided. It further provides that the proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof and Enquiry Officer may also, separately from these proceedings, make his own recommendation regarding the punishment to be imposed on the employee.

9. Under Regulation 37 of the Regulations it is provided that after the report of the proceedings and recommendation from the inquiring authority are received, the Committee of Management shall after notice to employee, meet to consider the report of the proceeding and recommendation made and take decision on the case. The teacher shall be allowed, if he so desires, to appear before the Committee in person to state his case and answer any question that may be put to him by any member present at the meeting. It is also provided that the Committee shall send a complete report together with all connected papers to the District Inspector of Schools but as noticed above they are to be sent to the Board after 1st January, 1984 for granting prior approval.

10. In the present case, the Committee of Management of the Institution had met on 19th June, 2002 to take a decision in the case of the petitioner.

Item No. 3 of the Resolution of the Committee of Management of the Institution as translated in English would read as under :

Item No. 3:

Consideration of the matter relating to termination of services of Sri Ghan Shyam

Tripathi, Physical Teacher (C.T.):

After perusal of the charges levelled against the petitioner and the report of the Enquiry Committee, the Committee unanimously resolves to terminate the services of the petitioner. The Committee further directs the Manager to take steps in the matter and intimate the officers of the Department to get the approval of the District Inspector of Schools at the earliest. Information may also be sent to Sri Ghan Shyam Tripathi by registered post.

It is, therefore, clear that all that the Committee of Management perused before taking the decision was the charge-sheet and the report submitted by the Enquiry Committee. The Committee of Management has not placed on record the said report of the Enquiry Committee and what appears from the recommendation made by the Punishment Committee on 27th July, 2007 is that the preliminary enquiry report submitted by the Enquiry Committee was placed before the Committee of Management of the Institution in its meeting held on 10th March, 2002 and after it was accepted, it was resolved to issue a charge-sheet to the petitioner. It is, therefore, clear that the enquiry report which is said to have been considered by the Committee of Management in its meeting held on 19th June, 2002 was the preliminary enquiry report on the basis of which the Committee had decided to issue a charge-sheet to the petitioner. There is nothing on the record to indicate that any Enquiry Officer was appointed after the issuance of the charge-sheet to the petitioner and whether any enquiry at all was subsequently done. What is also to be noticed is that by the communication dated 6th June, 2002 sent by the Manager of the Institution, the petitioner was required to file a reply to the charge-sheet within 15 days even though Regulation 36 requires the teacher to file a written statement within three weeks from the receipt of the charge-sheet and what is most surprising is that even without waiting for expiry of 15 days as mentioned in the letter dated 6th June, 2002, the Committee of Management met earlier on 19th June, 2002 to take a decision. It also transpires that the Committee of Management in its meeting held on 19th June, 2002 had only perused the charge-sheet and the preliminary enquiry report and it is on the basis of these two documents that the Committee of Management proposed to terminate the services of the petitioner. The Committee of Management was under an obligation to strictly follow the procedure prescribed under Regulations 35, 36 and 37 of the Regulations but that was not done.

11. A Division Bench of this Court in Ramesh Chandra Mishra (*supra*) observed that the action for dismissal, removal or reduction in rank against teacher, Headmaster or Principal can only be taken in the manner prescribed, namely holding an enquiry under Regulation 35 and thereafter following the procedure contained in Regulations 36 and 37 and then taking prior approval of the Commission and if any of the steps which are condition precedent for taking action are not followed, the action would be vitiated in law and would be void. The observations of the Division Bench are:

11. Section 16-G of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the Education Act) lays down conditions of service of Heads of Institutions, teachers and other employees of recognised institutions. Sub-section (1) of this Section provides that every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by the Regulations and any agreement between the Management and such employee in so far as it inconsistent with the provisions of the Act or with the Regulations shall be void. In view of this sub-section (1), Regulations have been framed laying down conditions of services of Heads of Institutions, teacher and other employees. They are contained in Chapter III of the Regulations. In so far as Head-master, Principal and teachers are concerned, Regulations 35, 36 and 37 provide for the procedure to be followed where complaint is received against any of the above mentioned persons. Regulation 35 provides for appointment of Enquiry Committee to go in to the charges. Regulation 36 lays down the manner in which any of the above persons are to be given an opportunity of hearing and Regulation 37 lays down procedure to be followed after the enquiry report of the enquiry committee is received and is placed before the Committee of Management.

....

....

13. In the year 1982 U.P. Secondary Education Services Commission and Selection Boards Act, 1982 (U.P. Act No. V of 1982) was promulgated by the Uttar Pradesh Legislature. This Act shall hereinafter be referred to as the "Commission Act". The object of this Act was to establish Secondary Education Services Commission and Selection Board for the selection of teachers in the institution recognised under the Education Act. Section 21 of the Act provides for restriction on dismissal removal or reduction in rank of teachers. Section 21 provides that no teacher specified in the schedule shall be dismissed or removed from service or reduced in rank and neither his emoluments may be reduced nor he may be given notice of removal from service by the Management unless prior approval of the Commission has been obtained. Section 21 came into force with effect from January 1, 1984 by notification issued by the State Government on 27th December, 1983. The resultant effect was that on or after 1st January, 1984 if any action of dismissal, removal or reduction in rank of teacher, Head master or Principal is taken then such action can only be taken after obtaining prior approval of the Commission in accordance with the Scheme of the Education Act, Regulations framed thereunder and the Commission Act. The action for dismissal, removal or reduction in rank against a teacher, Headmaster or Principal can only be taken in the manner prescribed viz. holding an enquiry under Regulation 35 and thereafter following the procedure as required in Regulations 36 and 37 and subsequent thereto taking prior approval of the Commission. If any of the steps which are condition precedent for taking action are not followed, the action in our opinion would be vitiated in law and would be void. Section 21(3) of the

Commission Act also specifically provides that after the order of dismissal, removal or reduction in rank or removal from service or reduction in emoluments of a teacher in contravention of the provisions of sub-section (1) or sub-section (2) shall be void.

....

32. In our opinion the above principle also applies to the present case. There is mandate that charges against a Principal have to be enquired into. This can be done only by a "Sub-committee" as there is no other alternative available to the Managing Committee to exercise its discretion as it could do in the case of a teacher. The power to enquire can only be delegated to a sub-committee viz. a Committee consisting of members of the Management Committee. We are consequently of the opinion that the submission of the learned counsel for the petitioner is well founded. The Subcommittee was not properly constituted and consequently action taken on the basis of an enquiry report by a Committee not constituted in accordance with law would, in our opinion, be vitiated in law. It is necessary in the interest of justice that the charges against the petitioner be enquired into by a Subcommittee appointed in accordance with law. Since the Commission has acted on the basis of the report of a Sub-committee which was not constituted in accordance with law, the approval given by the Commission to the resolution passed by the Management Committee, in our opinion, is also liable to be quashed.

(emphasis supplied)

12. A learned Judge of this Court in Committee of Management S.B. Inter College (supra) observed that it is for the Disciplinary Authority to form an opinion whether the charges levelled against an employee were established on the basis of the evidence adduced by the parties and the authority vested with the power to approve or disapprove such a decision of the Disciplinary Authority is not competent to substitute its own finding and to hold that the charges levelled were established or not established. The Court also observed that the approving authority is only required to consider whether the disciplinary enquiry was conducted by the competent authority in accordance with the procedure prescribed and that any resolution of the Committee of Management which was not passed by following the procedure prescribed under Regulations 35, 36 and 37 of the Regulations or which has been passed in violation of principles of natural justice cannot be approved by the Board u/s 21 of the Secondary Education Act. The relevant observations are :

4. Under the U.P. Intermediate Education Act, 1921 it has been provided by Section 16-G that every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by Regulations and any agreement between the management and such employee. Section 16-G(3) (a) further provides that no teacher be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments except

with prior approval in writing by the inspector and the inspector may approve or disapprove or reduce or enhance the punishment. However, with the enforcement of U.P. Secondary Education Services Selection Board Act, 1982 the power conferred upon the inspector for approval or disapproval of the action of punishment proposed to be taken by the management has been taken away and has been vested upon the Board.

5. Section 21 of the U.P. Secondary Education Service Selection Board Act, 1982 provides that the management of an institution is not competent to dismiss or remove any teacher from service or to reduce his rank or emoluments without prior approval of the Board.

6. The procedure for holding an inquiry and imposing punishment upon a teacher of an intermediate college is provided under Chapter III of the Regulations under the U.P. Intermediate Education Act, 1921. The said Regulations under Regulation 35 provides that the Committee of Management on receiving complaint about any irregularities committed by a teaching or non-teaching staff shall appoint an inquiry officer/committee. Regulation 36 provides that the grounds on which the action is proposed to be taken shall be reduced in the form of a charge-sheet and shall be communicated to the delinquent employee to enable him to reply the same within three weeks. The inquiry officer or the committee as the case may be after completion of the inquiry shall submit a report with recommendations regarding punishment to be imposed on the employee. Regulation 37 provides that the Committee of Management on receiving the report of inquiry with recommendations shall immediately give notice to the delinquent employee and place the same for consideration before the Committee of Management for final decision enabling the delinquent employee an opportunity to be personally present and to submit his defence and explanation before it.

11. As far as this part of the impugned order is concerned it may be noted that it is only for the disciplinary authority to form an opinion whether the charges levelled against the employee were established on record on the basis of the evidence adduced by the parties. The authority vested with the power to approve or disapprove such a decision of the disciplinary authority is not competent to substitute its own finding and to hold that the charges levelled were established or not established. The approving/disapproving authority is only required to consider as to whether the disciplinary inquiry was conducted by the competent authority; as to whether the same was held in accordance with the procedure prescribed and whether the punishment proposed is commensurate to the charges levelled, but such a power cannot be stretched to include within its ambit the power to hold afresh inquiry or to substitute its own findings in place of the findings arrived at by the disciplinary authority. It can at best while recording its disapproval refer the matter back to the disciplinary authority. Thus, the Board in the instant case had exceeded its jurisdiction in holding that some of the charges levelled against the respondent No. 3 which were found to be proved by the

disciplinary authority were actually not established.

17. In the instant case this second show-cause notice or an opportunity of hearing as contemplated by Regulation 37 of the Regulations was not afforded to the respondent No. 3 before the passing of the two resolutions resolving to dismiss the respondent No. 3 service. Thus, the well settled principles of natural justice stood violated. Accordingly, the impugned order of the Board cannot be held to be defective though may not be correct partly in so far as it deals with the individual charges and records its own finding that they are not proved. Any resolution of the Committee of Management which has not been passed by following the procedure prescribed or which has been passed in violation of the principles of natural justice in the matter of termination of service could not have been approved by the Board in exercise of powers u/s 21 of the Act. Therefore, the Board committed no error of law in disapproving both the resolutions of the Committee of management.

(emphasis supplied)

13. A learned Judge of this Court in Shiv Shanker Prasad Dwivedi Vs. Deputy Director of Education, IV Region and Others, , also observed that under Regulation 37 of the Regulations it was necessary for the Committee of Management to give notice to the teacher before taking a decision and the petitioner should be allowed to state his case and answer any question and copy of the enquiry report should be supplied at this stage because unless the employee knows the findings and recommendations against him, he cannot state his case before the Committee of Management. The relevant observations are :

13. Regulation 37 provides that soon after the report of the proceeding and recommendation from inquiring authority are received, the committee of management shall, after notice to the employee, meet to consider the report of the proceedings and recommendation made and take decision on the case, the employee shall be allowed to appear in person and to state his case. The opportunity to the employee at this stage is not a empty formality. He should be allowed to state his case and answer any question and this opportunity is meaningless until a employee is supplied with a copy of the inquiry report. It is the report and recommendations which are to be considered by the Managing Committee. Unless the employee knows the findings and recommendations against him, he cannot state his case before the committee of management. In the present case, there was serious dispute with regard to charge No. 3 and charge No. 6. Petitioner was not aware whether the letter written by him in respect of cheating in the board examination was accepted. He was not aware whether his explanation has been taken into consideration or not. Petitioner was not allowed to lead evidence about the facts which may have proceeded or compelled him to write a letter. Respondents have not cared to file a copy of the letter before this Court. Similarly, it was not known to petitioner whether explanation of petitioner with regard to Sri Jai Kumar Dev was accepted by the Inquiry Officer or not. In the absence of supply of the inquiry report, an

employee will be handicapped and will not be able to defend himself before the committee of management, in *Kanhaiya Lal Vs. District Inspectors of School and Others*, , this Court held in para 10, that when the inquiry report was not supplied nor the evidence which was read against the employee was made available to him, the procedural safeguard contemplated by Regulation 37 of Chapter III of the Regulations made under the Act were violated. In *Ram Kumar Dixit v. District Inspector of Schools. Bareilly*, 1980 UPLBEC 110, a Division Bench of this Court quashed the orders of Deputy Director of Education on the ground that no evidence was recorded nor the report of the Inquiry Officer was considered by the committee of management after notice to petitioner, and thus the procedure was in contravention of the statutory provisions of Regulations 36 and 37, which render the decision of the Committee illegal. In *Surendra Nath Misra v. Up-Shiksha Nideshak, Jhansi Mandal*, 1980 ACJ 396, it was found that before approval is sought, the committee of management must take necessary steps in accordance with Regulations.

14. The question whether, petitioner was served with a show-cause notice sent by registered post by the committee of management to appear before the committee of management also cannot detain the Court any longer. Adherence to principle of natural justice is sine qua non for a fair enquiry. Punishing authority must ensure that the notice of hearing is not only sent but also served upon delinquent employee. The object in Regulation 37 is to allow the employee to appear before the Committee. For this purpose, the notice to employee means service of notice and not merely dispatch of notice. A document which has been sent by registered post can be taken to have been served only when it is established that it was tendered to the addressee. Where an employee disputes that the notice for appearance before the committee of management was not served upon him, the District Inspector of Schools, before approving the punishment must record a finding about its service. In the present case, petitioner had pleaded in the very first paragraph with grievance that he was neither sent nor did he receive the notice for hearing to appear before the committee of management on 28.1.1980. The District Inspector of Schools completely missed the issue and proceeded to act like a disciplinary authority. He did not even refer to this question which was raised before him, and which completely knocks off the inquiry proceedings. The Deputy Director of Education has also missed the issue all together and proceeded to examine the charges immediately after setting the case that petitioner was sent a notice and he did not appear before the committee of management.

(emphasis supplied)

14. This Court in *Gajendra v. Administrator U.P. Co-operative Processing and Cold Storage Federation Ltd. and others*, 1991 SCD 544, set aside the order of dismissal from service of the petitioner on the ground that the petitioner had not been afforded reasonable opportunity to show-cause against the charges, no oral Enquiry was conducted to substantiate the charges and the petitioner was not

given any opportunity to cross-examine the witness and produce evidence in his defence.

15. A Division Bench of this Court in Subhash Chandra Sharma v. Managing Director and another, 2000 (1) ESC 65, also observed that after service of the charge-sheet evidence has to be led and opportunity has to be given to the employee to cross-examine the witness. The relevant observations are as follows :

In our opinion after the petitioner replied to the charge-sheet a date should have been fixed for the enquiry and the petitioner should have been intimated the date, time and place of the enquiry and on that date the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation had failed to appear for the enquiry then an ex parte enquiry should have been held but the petitioner's service should have not been terminated without holding an enquiry. In the present case it appears that no regular enquiry was held at all. All that was done that after receipt of the petitioner's reply to the charge-sheet he was given a show-cause notice and thereafter the dismissal order was passed. In our opinion this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led in our opinion the impugned order is clearly violative of natural justice.

....

A dismissal order has serious consequences and should be passed only after complying with the rules of natural justice. Since in the present case no enquiry was held at all and no evidence led in the presence of the petitioner nor was he given opportunity to cross-examine the witnesses against him or lead his own evidence the impugned dismissal order is illegal....

The aforesaid decision in the case of Subhash Chandra Sharma (supra) has been confirmed by the Supreme Court in SLP (Civil) No. 13792 of 2000 decided on 16th August, 2000.

16. In Hulashi Ram Sagar v. State of U.P. and others, 2002 ESC 497, a Division Bench of this Court also set aside the order of punishment on the ground that it had been passed only after obtaining the reply to the charges, without holding any regular enquiry.

It is clear from the facts narrated above that enquiry officer was not appointed and the submission of the enquiry report, therefore, does not arise. The Committee of Management of the Institution merely on the basis of the charges contained in the charge-sheet and the preliminary enquiry report and that too prior to the expiry of the period mentioned in the notice resolved on 19th June,

2002 to terminate the services of the petitioner. The detailed procedure as provided for in Regulations 35, 36 and 37 of the Regulations contained in Chapter III of the Intermediate Education Act had not been complied with. It is this resolution dated 19th June, 2002 that was required to be examined by the Board for giving its approval u/s 21 of the Secondary Education Act.

The Committee constituted by the Board, however, instead of examining whether the resolution of the Committee of Management to which it was required to give its approval was in accordance with law, proceeded to examine the charges contained in the charge-sheet on the basis of the reply submitted by the petitioner before the Board and then resolved on 27th July, 2007 to recommend to the Board to approve the resolution of the Committee of Management of the Institution taken on 19th June, 2002. The Board in its meeting held on 20th February, 2008 accepted the recommendation made by the Committee.

The Board, as is clear from the decisions referred to above, was required to consider whether the Committee of Management had adhered to the procedure prescribed in Regulations 35, 36 and 37 of the Regulations contained in Chapter III of the Intermediate Education Act. The Board, in such circumstances, when the Committee of Management of the Institution blatantly violated the provisions of the Regulations referred to above, had no option but to disapprove the resolution of the Committee of Management of the Institution. The Board could not have held the enquiry itself as if it was the Enquiry Officer and in any case, it also did not follow the procedure prescribed in the said Regulations.

It is, therefore, not possible for the Court to sustain the decision taken by the Board u/s 21 of the Secondary Education Act to approve the resolution of the Committee of Management of the Institution to terminate the services of the petitioner.

The petitioner has since retired. The charge-sheet was issued to the petitioner on 26th April, 2002. More than 10 years have lapsed. It will, therefore, not be appropriate at this stage to order a fresh enquiry by the Committee of Management of the Institution or require the Board to take a fresh decision.

The writ petition is, accordingly, allowed. The decision taken by the Board on 20th February, 2008 as well as the recommendation made by the Committee of the Board on 27th July, 2007 are, accordingly, set aside and the resolution dated 19th June, 2002 terminating the services of the petitioner is not approved. The petitioner shall be entitled to all consequential reliefs which shall be determined by the District Inspector of Schools in four months.